

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE MADHURESH PRASAD**

**SAT 168 of 2022
CAN 1 of 2022**

**Rajkumar Sethia
Vs.
Jayasree Sengupta & Ors.**

Appearance:

For the Appellant	:	Mr. Siva Prasad Ghose, Adv. Ms. Debjani Ghosh Roy, Adv.
For the Respondent	:	Mr. Aniruddha Chatterjee, Adv. Mr. Tarak Nath Halder, Adv.

Judgment On : **22.03.2024**

Harish Tandon, J.:

The suit for recovery of possession against the trespasser stood decreed by the Trial Court and such decree affirmed by the First Appellate Court, the defendant/appellant is assailing the concurrent finding of facts in the instant second appeal asserting that it involves substantial question of law and, therefore, to be admitted under Order 41 Rule 11 of the Code.

A little prelude to the facts emerged from the record are adumbrated herein below:

Undeniably one Trilokya Kumar Dutta Roy purchased the plot of land from one Ishwar Prasad Goenka & Ors. on the basis of the sale-deed dated 12.4.1960 and, thereafter, constructed a four storied building thereupon as per the sanction plan approved by the Kolkata Municipal Corporation. The said owner died intestate leaving behind him surviving his widow namely Smt. Dipti Rani Dutta Roy and two sons namely Sandeep Dutta Roy and Sudeep Dutta Roy and a daughter Jayasree Sengupta. A partition suit was filed by one of the son giving rise to registration of TS 72 of 1981 which was decreed on compromise on 19.6.1982. The terms of the compromise so entered revealed that the entire ground floor of the said building was allotted to Sandeep Dutta Roy, the first floor was allotted to Dipti Rani Dutta Roy, the second floor to Sudeep Dutta Roy and the third floor to Jayasree Sengupta. It further stipulates that the office in the ground floor, the staircase, garage and the other common passages would remain in common between the aforesaid co-sharers. The record would further reveal that though the partition suit was decreed in final form on the basis of a compromise decree yet the same was not engrossed on the stamp paper which led the appellant to contend that the property remain unpartitioned and, therefore, the suit at the behest of the respondent is not maintainable.

In support of the aforesaid contentions, the reliance is placed upon a judgment of this Court rendered in case of ***Prabhat Kumar Mukherjee vs. Santi Ranjan Banerjee***, reported in **61 CWN 553**. It is further contended

that the appellant was a tenant in respect of the suit premises and subsequently, became the owner on the basis of a sale-deed executed on 7.10.1998 by the admitted owner and, therefore, it cannot be said that the appellant is a trespasser in respect of a property. It is further contended that a suit for eviction was filed for eviction of the appellant being Title Suit no. 319 of 1996 which was decreed *ex parte* but the said decree was never put into execution as subsequently the owner transferred the suit premises by executing the sale-deed and, therefore, the present suit for recovery of possession treating the appellant as trespasser is not maintainable.

It would be pertinent to record that though the decree for eviction passed against the appellant was not executed but subsequently, a suit was filed by the original plaintiff being Title Suit no. 280 of 2001 in the Court which was ultimately decreed on contest declaring the purported sale-deed dated 7.10.1998 to be void and the said decree has not been assailed further and, therefore, attained finality.

Three points have been raised in the instant appeal which according to the Counsel for the appellant involves substantial question of law. **Firstly**, it is contended that so long the final decree passed on compromise is not engrossed on the stamp paper, it does not sever the rights of the co-sharers and, therefore, the property would remain a joint property and, therefore, the suit for recovery of possession filed by one of such co-sharer is not maintainable. **Secondly**, even if the suit seeking declaration of the purported sale-deed to be void, is decreed on contest, it does not *ipso facto* render the status of a tenant as trespasser but restored the original status as tenant

which he originally possessed in respect of a suit premises. **Thirdly**, the decree for eviction passed against the appellant was not executed and the period of limitation for execution thereof has expired, the status of the appellant cannot be treated as a trespasser but he remained as a tenant.

The facts involved in the instant appeal is so intertwined that all the aforesaid three points are required to be decided conjointly and it would not be proper to deal with the same separately. The facts as adumbrated hereinabove are more or less undisputed as the appellant has also not taken any contrary stand in this regard. The property initially owned by Trilokya Kumar Dutta Roy, has not been disputed by the appellant and it is also not in dispute that said original owner constructed a four storied building thereat and the appellant was inducted as a tenant in respect of a portion of the constructed house as depicted in the schedule appended to the plaint. It is apparent from the record that upon the death of the original owner, the successors instituted a suit for partition of the said property which ended on compromise in final form. The plea of the appellant that the said compromise decree was not engrossed on the same paper nor effectuated the partition does not appear to us to have any bearing in the instant case to the claim made against the appellant.

The judgment rendered in ***Prabhat Kumar Mukherjee (supra)*** is categorical that no legal title accrues in favour of a party in respect of a property which he acquired on the basis of a compromise as the final decree was not engrossed on the requisite stamp paper. It has further been held that the parties to the compromise as co-sharers shall be precluded from

questioning the allotment amongst themselves. It would be apposite to consider the incidences in the event the final decree is not engrossed on a stamp paper so as to make it final and binding on the co-sharers. The concept of the partition suit envisaged that the parties thereto has a pre-existing right in respect of the properties included therein in common with themselves and intended to sever such common right to the exclusion of other. The pre-existing right in respect of a joint property is *sine qua non* in the partition suit as an alien to the said property may not ordinarily be included in a suit for partition as they are not co-sharers or co-owners in respect thereof. To render the final decree passed in a partition suit to be effective, the law postulates that such final decree should be engrossed on the stamp paper which is for the purpose of the collection of revenue as it affects the immovable property and creating an exclusive right in terms of the allotted portion to the exclusion of the other co-sharers. As held in the above-noted decision, even if the compromise decree has not been recognised in final form yet the parties cannot detract from the terms and conditions embodied in the compromise decree even though their shares are not recognised to have been separated or severed from the other.

The law in this regard is more or less settled but such point in our view does not affect the right of a co-sharer to initiate a proceeding for recovery of possession against a trespasser or a tenant provided the other co-sharers do not object to it. Even if the property is considered to be joint amongst the co-sharer, it does not preclude one of the co-sharer to initiate a proceeding for recovery of possession against the trespasser as none of the other co-sharers

have come forward and objected to such recovery of possession (***See: Kanta Goel vs. B.P. Pathak & Ors. reported in (1977) 2 SCC 814; Sri Ram Pasricha vs. Jagannath & Ors. reported in (1976) 4 SCC 184***). We thus do not find that suit at the behest of the co-sharer against the trespasser is not maintainable. The co-sharer is regarded as a co-owner in respect of an entire property and, therefore, on the basis of a pre-existing right before the suit for partition is decreed in final form, does not take away the right and, therefore, the tenant or a trespasser cannot defeat such claim either on the ground of non-impleadment of necessary party or the suit being defective in this regard as none of the co-sharers have any objection to the recovery of the possession thereof. Thus the final decree passed in a partition suit having not engrossed in the stamp paper does not stand in the way of maintaining the suit against the trespasser by a co-sharer of the suit property.

The other point which has been taken by the appellant that the earlier suit for eviction under the West Bengal Premises Tenancy Act, 1956 was not put into execution, the appellant cannot be regarded as a trespasser in respect of the suit premises, is not tenable as well. The definition of a tenant under Section 2 (h) of the West Bengal Premises Tenancy Act, 1956 is required to be quoted in order to address the aforesaid point agitated before us. The said Section reads thus:

“2 (h). ‘tenant’ {means any person} by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and {includes any person continuing in possession after the termination of his tenancy or in the event of such person’s death, such of his heirs as were ordinarily

residing with him at the time of his death,} but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction.”

From the language employed in the aforesaid provision, it leaves no ambiguity in our mind that it is expansive and of wide import and certainty can be envisioned therefrom that a person against whom a decree for eviction is passed, is kept outside the purview of a said definition. Admittedly the appellant suffered a decree for eviction and such decree has attained finality in absence of any challenge being thrown before the higher forum.

The question thus arose as to whether the tenant who suffered a decree for eviction under the provisions of the West Bengal Premises Tenancy Act, 1956 can be regarded as a tenant in the event the decree for eviction passed against him is not executed by the landlord. The definition of a tenant is clear and explicit that the moment the decree for eviction is passed on the grounds enumerated in the said Act, required to be proved by the landlord to seek an eviction against the tenant, he ceases to be a tenant and, therefore is not entitled to claim any right as a tenant. The word ‘right’ as used in a preceding paragraph is to be understood in the perspective of a status and, therefore, it is a duty of the Court to consider whether he still acquired the status of a tenant. There is no pleading in relation to the status in the written statement filed by the appellant; obviously the reason being that subsequent to the said eviction decree passed against him, a sale was executed in respect of a suit premises and, therefore, he was asserting the right as an owner in respect thereof. Undeniably, the said sale-deed is declared as void and to be

delivered and cancelled in a validly instituted suit and such decree has attained finality. The effect of the said decree is that the appellant cannot be regarded as a owner in respect of a suit premises and, therefore, his status in this regard has been finally determined. The appellant cannot be regarded as an owner of the suit premises and the logical effect is laudable that he is no longer an owner thereof.

Whether the status of the appellant would be reverted to a status of a tenant after such decree passed by the Court is a question which needs answer. The Apex Court in ***Bai Chanchal vs. Syed Jalaluddin*** reported in ***AIR 1971 SC 1081*** was considering a question whether a tenant can claim a novation of a tenancy or a fresh tenancy after having suffered a decree of eviction under the Rent Control Act. In the said case, the tenant was permitted to occupy the premises on the basis of a compromise decree and later on asserted that since he continued in possession even after a decree for eviction is passed against him, it would be regarded as a creation of a new tenancy which is turned down by the Apex Court in the following:

“6. The second point urged by learned counsel was that, by the consent decree itself, a new tenancy was created which was to continue for five years and, in the, meantime, the Bombay (Rents Hotel & Lodging House Rates) Control Act, 1947 came into force and the appellants were protected from ejectment under the provisions of that Act. The consent decree does not state that a new tenancy is being created. The argument was that the terms of that consent decree should be interpreted as indicating an intention to create a new tenancy.’ We are unable to find any such terms. On the face of it, all

that the, consent decree envisaged was that, though the judgment-debtors were liable to immediate eviction, the decree-holders agreed to let them continue in possession for a period of five years. Since this concession was being granted as a special case, the decree- holders insisted that mesne profits should be paid at a much higher rate so much so that between all the defendants, governed by the two decrees of 8th July, 1946 and 28th January, 1949, the amount payable as mesne profits became Rs. 7,314-8-0 per annum which had no relation with the original rent of Rs. 199/- per annum for the entire land fixed by the lease of 1895" In fact the decree-holders sought further protection by requiring the judgment-debtors to pay the mesne profits in monthly instalments, and the instalments were so fixed that the mesne profits due for five years were to be paid within a period of three years. There was the further clause that, in case of default of payment of the mesne profits, the defaulting judgment- debtors could be immediately called upon to deliver possession. These terms can, in no way, be interpreted as creating a new tenancy constituting the decree-holders as landlords and the judgment debtors as their tenants. The terms of the consent decree neither constituted a tenancy nor a licence. All that the decree-holders did was to allow the judgment-debtors to continue in possession for five years on payment of mesne profits as a concession for entering into a compromise. The argument advanced must, therefore, be rejected."

The aforesaid observation of the Supreme Court and the ratio laid down therein was applied in a subsequent decision rendered by the Division Bench of this Court in ***M/s. Purban Pvt. Ltd. vs. Deb Kumar Shaw,***

reported in **81CWN 953** wherein it is held that payment of a *mesne* profit in terms of a compromise decree cannot be treated to create any fresh tenancy in the following:

“10. In AIR 1971 SC 1081 Bai Chanchal v. Syed Jalaluddin a suit for ejectment was decreed on compromise. it was agreed that the defendants would remain in possession of suit premises for a period of five years and would hand over possession after expiry of the said period. It was also provided in the decree that the defendants would pay certain mesne profits monthly during this period. There was a clause that in case, of default of payment of mesne profits the judgment-debtors could be immediately called upon to vacate the suit premises. It was held by their Lordships of the Supreme Court that these terms did not create a new tenancy nor a licence. The decree-holders merely allowed the judgment-debtors to continue in possession for five years on payment of mesne profits as a concession for entering into compromise. The decisions in (1970) 3 SCC 124 : AIR 1971 SC 1081 and AIR 1954 Bom 370 are applicable to the instant case as the facts are almost similar. I have already held that the terms of the decree provide a definite period within which all arrears of rents and mesne profits as mentioned in the decree are to be paid and during this period the tenant defendant has to pay monthly mesne profits and in default of non-compliance with any of the terms the plaintiff respondent will be entitled to execute the decree for ejectment and arrears of rents and mesne profits. This payment of monthly mesne profits for a definite period cannot be treated as creating a fresh tenancy. This position becomes very clear from term No. 4 of the compromise petition which

says that in case of due compliance with the terms of the decree and on full payment of the decretal dues the ejectment decree will be deemed to have been satisfied and the defendant will be recognised as a tenant under old terms and conditions. The decision in AIR 1966 Raj 178 does not apply to this case as in that case the stipulation in the compromise decree was to pay monthly rent for an indefinite period and not mesne profits.

11. In the instant case it is apparent from the terms of the compromise decree that the decree for ejectment and for arrears of rent and mesne profits was passed against the tenant-defendant. By the terms of the decree only a concession has been made to the effect that the plaintiff will not execute the decree if the arrears of rents and mesne profits be paid within a certain period of time and the defendant has been permitted to stay in the suit premises till that time on payment of monthly mesne profits. Those terms in the compromise decree cannot, in any way, be interpreted as creating a demise of the suit premises in favour of the defendant and no fresh tenancy is created thereby.”

Although the aforesaid judgments are relatable to the eviction decree passed on compromise and the intention of the parties to be gathered from the terms and conditions incorporated therein yet the observations therein can be gainfully applied to the effect that mere continuance in possession after the sufferance of decree for eviction does not create a new tenancy.

Furthermore, the plea of adverse possession has not be taken by the appellant in the written statement filed by him and, therefore, we need not

have to delve into such aspect. The observations of the Apex Court in case of ***Lakhmi Chand Khemani vs. Kauran Devi***, reported in ***AIR 1966 SC 1003*** can be profitably relied upon in the present context. The Apex Court was considering the definition of a tenant given in the Rent Control Act which appears to be *pari materia* with the definition of a tenant given in the West Bengal Premises Tenancy Act, 1956. The Apex Court held that the definition would suggest that a person who suffered a decree for eviction cannot be regarded as tenant any longer and precluded from all such right which he possessed as a tenant before the aforesaid decree for eviction is passed in the following:

“10. We are unable to agree with the learned Subordinate Judge that a tenant remained a tenant in spite of the definition in Section 2(1) of the Act of 1958 and notwithstanding a decree in ejectment earlier passed against him, because, in view of the refusal of the authority concerned to grant sanction to execute the decree under Section 19 of the Slum Areas Act, that decree was for the moment inexecutable. The Act of 1958 quite clearly excluded from the definition of “tenant” a person against whom any order or decree for eviction had been made, that is to say, under it a tenant who had suffered a decree in ejectment was no more a tenant. Section 50 of this Act says. “No civil court shall entertain any suit or proceeding in so far as it relates ... to eviction of any tenant under Section 14”. Section 14 provides for an order in ejectment being made by the Controller appointed under the Act on any of the grounds mentioned in it but not otherwise. Section 50, therefore, bars the jurisdiction of a civil court to try a suit for the eviction of a tenant, that is to say, a tenant as

defined in the Act. It would not bar a suit for eviction against a person who is not a tenant as so defined. Under the ordinary law applicable to landlords and tenants, a tenant who has suffered an ejectment decree is not considered a tenant anymore; he has after the decree none of the rights which as tenant he earlier possessed.

11. We find no justification for changing the definition of tenant in the Act of 1958 by drawing upon the provisions of the Slum Areas Act as the learned Subordinate Judge did. The last mentioned Act is not; concerned with relations between landlords and tenants as such; it does not purport to interfere directly with the ordinary contractual rights of landlords and tenants either as to rent or as to recovery of possession. However that may be, we find nothing in Section 19 of the Slum Areas Act to which alone we were referred by learned counsel for the appellant for the purpose, to warrant the view suggested that a tenant within the Act of 1958 would include a tenant against whom a decree in ejectment has been passed. Section 19 only says that a person who has obtained a decree of ejectment against a tenant shall not be entitled to execute it without the previous permission of the prescribed authority. It does not say that a tenant suffering the decree still continues to be a tenant for any purpose. The section does not purport to define the word "tenant" in any way. It assumes that a decree of eviction has been passed against a tenant. The expression "decree or order for the eviction of a tenant" in Section 19 necessarily contemplates a person who was prior to the decree a tenant within the meaning of the Rent Act of 1958 or any of its predecessors. The section is not in any way concerned with the question whether the tenants suffering a decree in ejectment still continue to be such tenants within

the meaning of the Rent Act. It is of some importance to point out in this connection that the Slum Areas Act making ejectment decrees against tenants inexecutable without the requisite permission came into existence before the Act of 1958. It is pertinent to observe that notwithstanding this, the latter Act excluded from the definition of "tenant" one who had suffered an ejectment decree. Obviously, the Act of 1958 did not contemplate that the Slum Areas Act would in any way//affect the definition of tenant contained in it. No question as to what the rights of a tenant against whom a decree in ejectment has been passed in view of Section 19 of the Slum Areas Act are, arises in this appeal, the only point being whether he is a tenant within the Act of 1958 so as to oust the jurisdiction of a civil court to entertain the suit. We think he is not, for Section 2(1) of the Act of 1958 must be read by itself and its meaning cannot be affected by any consideration derived from Section 19 of the Slum Areas Act."

We would have accepted the stand of the appellant provided he does not suffer a decree for eviction prior to the execution and registration of the sale-deed which was declared to be void. The moment the appellant suffered a decree for eviction and the sale-deed executed in his favour has been declared void he cannot revert back to the status of a tenant as he does not satisfy the definition of a tenant engrafted in the said Act. The ratio laid down in the judgment rendered in **Lakhmi Chand Khemani (supra)** clearly applies in this regard and, therefore, the status as a tenant cannot be reverted and the decree for eviction would stare at his face. Furthermore, there is no iota piece of evidence produced before us that after the decree for eviction was passed against the appellant, any rent was collected which

would impliedly suggest the creation of a new tenancy nor any agreement having been entered into in this regard. The reason can be reasonably inferred that in a close proximity of time of a decree for eviction having passed against the appellant, a sale-deed was executed in respect of a suit premises in his favour but the position becomes worse when the said sale-deed is declared void by the Competent Court.

Taking a clue from the above a person who suffered an eviction decree but such decree has not been executed, does not create any right as a tenant and, therefore, a suit for recovery of possession against a trespasser does not appear to be non-maintainable. The West Bengal Premises Tenancy Act, 1956 is a beneficial piece of legislation enacted with the laudable object to protect the interest of the tenant being evicted in the hands of the unscrupulous landlord. It further envisaged that a decree for eviction against the tenant can only be passed on a ground enumerated in Section 13 thereof and so long such decree is not passed, the protections provided in the said Act would be extendable to the said tenant. The definition of a tenant manifestly indicates that it shall not include a person within its ambit if a decree for eviction is passed against him. It is immaterial whether such a decree was executed or not as non-execution of the decree does not resurrect the status of a tenant. Any findings opposed to the same would offend the intendment of the legislators and would go counter to the spirit of the provisions created in the legislation. In absence of any defence of perfecting the title by way of adverse possession or creation of any new tenancy upon payment and acceptances of rent or on the execution of any fresh agreement recognising the status of a

tenant, the tenant who suffered a decree even if he remained in possession cannot elevate his status as a tenant, therefore, we do not find any fetter on the part of the plaintiff/respondent to institute a suit for recovery of possession on the ground that the appellant has no right to remain in possession.

In view of the findings made hereinabove, we do not find that there is any involvement of a substantial question of law in the instant appeal, the appeal is dismissed under Order 41 Rule 11 of the Code of Civil Procedure. The connected applications are accordingly dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Harish Tandon, J.)

I agree.

(Madhuresh Prasad, J.)